In the High Court of Judicature at Madras

Dated : 21.11.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1422 of 2007

Commissioner of Income Tax
Tamil Nadu-III
Madras. .. Appellant

Vs

M/s.Shakthi Knitting Limited
No.64, Velachery Main Road
Velacherry,
Chennai - 600 042. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 16.3.2007 made in I.T.A.No.1375/Mds/2005 for the assessment year 2001-2002 against the order of the Commissioner of Income Tax (Appeals) of the Commissioner of Income Tax (A) V Chennai-34 in ITA No.50/2004-2005 dt. 30.11.2004 and arising out of the Assessment Order of the Asst. Commissioner of Income Tax, Company Circle VI (2) Chennai-34 for the Asst. Year 2001-2002 dt. 8.3.2004 in PAN/GIR No.AAECS 4040 H.

For Appellant : Mrs.Pushya Sitaraman

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 16.3.2007 made in I.T.A.No.1375/Mds/2005 for the assessment year 2001-2002.

2. The brief facts of the case as culled out from the statement of facts stated in the memorandum of appeal are as follows:

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The assessee is engaged in manufacture and export of knitted fabrics and garments. While computing the deduction under Section 80HHC, the assessing officer has deducted 90% of job work Receipts, interest income and scrap scale. Against that order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) held that the receipt of job works is derived from the export business and hence form part of the profit of business. Against that order, the Department preferred an appeal before the Income-tax Appellate Tribunal and the Income-tax Appelate Tribunal upheld the order of the Commissioner of Income-tax (Appeals) and dismissed the Departmental appeal. The correctness of the said order is canvassed by the revenue by filing the present appeal by formulating the following question of law.

> "Whether on the facts and in the circumstances of the case the Income-tax appellate Tribunal was right in holding that the Commissioner of Income-tax (Appeals) was correct in directing the assessing officer to exclude 90% of net income from the job receipts in view of the terms of clause (baa) to explanation 4B to Section 80HHC of the Income-tax Act?"

3. We heard the argument of the learned counsel appearing for the revenue and perused the materials on record.

4. Learned counsel appearing for the revenue has fairly submitted that the issue involved in this appeal is covered by the decision of this Court in the case of K.R.M.MARINE EXPORTS LIMTIED VS. ASSISTANT COMMISSIONER OF INCOME-TAX reported in (2007) 288 ITR 151, wherein this Court has held that "the term "export turnover" has been defined in clause (b) of explanation to Section 80HHC of the income-tax Act, 1961. Clause (baa) of the explanation to Section 80HHC was inserted to clarify a formula. A conjoint reading of the clauses (b) and (ba) of the explanation clearly indicates that the explanation (baa) has been introduced to bring the components of "export turnover" and "sale turnover" on par with each other. Both the numerator and denominator show that they refer to sale proceeds. The nominator and denominator are required to have a common element, which is the sale proceeds. Any receipt, which does not form part of sale proceeds, cannot come within the ambit of the above ratio. By the proviso to clause (ba), it could be seen that the expression "turnover" shall have effect so as to exclude Section 28(iiia), (iiib) and (iiic) which refer to, inter alia, profits on sale of a licence granted under the Imports (Control) Order, cash assistance, duty draw back, etc.," and ultimately held that even if the assets of the company have been used for the purpose of job work, which is also having relation with the export income, deduction has to be considered as per the explanation (baa).

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5. For the fore-going reasons and in the light of the law laid down by this Court in the above referred judgment, the appeal is dismissed as no question of law, much less a substantial question of law is involved.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar,
   Income-tax Appellate
   Tribunal, Rajaji Bhavan, III Floor,
   Besant Nagar,Chennai.

2. The Commissioner of
   Income-tax (Appeals) - V
   Chennai

3. The Asst.Commissioner
   of Income-tax
   Company Circle VI(2), Chennai.

4.The Commissioner of Income Tax,
Tamil Nadu -III, Madras.

+1cc to Mr.Pushya Sitaraman, Sr.S.Counsel (IT Dept.) Sr 69531

SJ (CO)
km/7.12.

Tax Case (Appeal)
No.1422 of 2007

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